THIS OPINION WAS NOT WRITTEN FOR PUBLICATION
The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK J. BARON

Appeal No. 1998-0910
Application No. 08/454,596[1]

HEARD: October 7, 1999

Before COHEN, STAAB and NASE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1

[1] Application for patent filed May 30, 1995. According to appellant, this application is a continuation-in-part of Application No. 08/218,178, filed March 28, 1994, now abandoned.

through 8, all of the claims in the application.

Appellant's invention pertains to an above-ground sewage removal system for a low water use toilet within a building. As disclosed (specification, page 3), the invention is intended to provide a practical sewage removal system for low water use toilets in buildings in polar or cold climates. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the main brief (Paper No. 14).

As evidence of obviousness, the examiner has applied the documents listed below:

Burns et al. (Burns)	3,730,884	May 1, 1973
Oldfelt et al. (Oldfelt)	4,713,847	Dec. 22, 1987
Ushitora et al. (Ushitora)	5,100,266	Mar. 31, 1992

The following rejections are before us for review.

Claim 1 stands rejected under 35 U.S.C. § 112, second

paragraph, as being indefinite.[2]

Claims 1 through 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Burns in view of Ushitora and Oldfelt.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 15), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 14 and 16).

In the main brief (pages 5 and 6) and reply brief (page 1), appellant indicates that claims 3 and 5 through 8 may be considered together with claim 1, and claim 4 may be considered together with claim 2. Accordingly, we shall focus our attention, infra, exclusively upon claims 1 and 2, with

[2] Only independent claim 1 has been rejected under 35 U.S.C. § 112, second paragraph, ostensibly since the asserted indefiniteness appears therein. Nevertheless, and generally speaking, when an independent claim is perceived to be indefinite, it is appropriate to reject all dependent claims as well since they incorporate the indefiniteness of the independent claim therein.

claims 3 and 5 through 8 and claim 4, respectively, standing or falling therewith.

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the Board has carefully considered appellant's specification, claims, and drawing, the evidence of obviousness,[3] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness issue

We reverse the examiner's rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

---

[3] In our evaluation of the applied patents, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

As perceived by the examiner (answer, page 4), claim 1 is "unclear as to the limitation imparted by the language 'above-ground' on lines 1, 3 and 4." We fully comprehend the examiner's point of view, as explained in the answer. Nevertheless, for the reasons set forth, infra, we have concluded that the language of concern to the examiner does not render claim 1 indefinite.

We read claim 1 as a whole, in light of the underlying disclosure. As to the specification, we find that it provides a detailed description (pages 5 through 8) of the invention referencing the illustration in Fig. 1. From our perspective, one having ordinary skill in this art would have readily appreciated, from a consideration of appellant's overall teaching, that the described and portrayed sewage removal system operates above ground. We are in accord with the advocated view (main brief, pages 6 and 7, and reply brief, page 2) that, under the circumstances of the present case, the term "above-ground" is appropriately given its ordinary meaning of "[s]ituated on or above the surface of the ground." This ordinary meaning is clearly consistent with the showing in appellant's Fig. 1. Therefore, as we see it, claim 1 is definite in setting forth an "above-ground sewage removal system" comprising an "above-ground" transfer tank, and a holding tank "above-ground" and remote from the transfer tank. Simply stated, appellant's claim 1, as acknowledged in the main brief (page 7), is clearly limited by the definite recitation of "above-ground." This language is not merely an intended use within the context of claim 1. Thus, the

rejection under 35 U.S.C. § 112, second paragraph, is not well founded and must be reversed.

The obviousness issue

We reverse the rejection of claims 1 and 2 under 35 U.S.C. § 103 as being unpatentable over Burns in view of Ushitora and Oldfelt. It follows that the rejection of claims 3 through 8 is likewise reversed since these claims stand or fall with claims 1 and 2 as earlier indicated.

Claim 1 is drawn to an above-ground sewage removal system for a low water use toilet within a building comprising, inter alia, an above-ground transfer tank, a holding tank above-ground and remote from the transfer tank, a sewage discharge pipe extending between the transfer tank and the holding tank, the sewage discharge pipe rising to a point which is significantly above the fluid level in each of the transfer and holding tanks, a vent pipe for the interior of the holding tank and a blower associated with the vent pipe to create a sufficient vacuum within the holding tank when activated to

draw sewage from the transfer tank through the discharge pipe into the holding tank, and a switch means associated with the transfer tank to activate the blower when the level of sewage in the transfer tank rises to a predetermined height.

Turning to the evidence of obviousness, we find that the Burns patent addresses a method and apparatus for conveying sewage (Figs. 1 and 2) wherein a collecting tank 16 (transfer tank) receives sewage from a plurality of sources (vacation homes, for example). In particular, the collecting tank 16 of Burns is constructed of reinforced concrete or other material suitable for underground use, with the tank being placed in an excavation and covered over with soil (column 9, lines 34 through 43). As explained by the patentee (column 6, lines 11 through 15, and lines 46 through 64), periodically when sewage in the collecting tanks 16 reaches a predetermined level (as sensed by low and upper level detector switches 98, 96), a vacuum valve 20 (76 in Fig. 3) opens and the sewage is discharged into a vacuum line 22 and conveyed to vacuum receiver tank 24 (holding tank) at an ejector or transfer station 26 (Fig. 6) under the influence of a vacuum generated by vacuum pump 160. The positioning of the transfer station (column 16, line 70, to column 18, line 62) relative to the ground surface is not described in the specification; however, Fig. 1 may fairly be viewed as reflecting an above-ground transfer station building 26 with a pitched roof.

The patent to Ushitora teaches a vacuum-type sewage collecting apparatus (Fig. 4) wherein sewage from houses 30 passes under natural flow through underground pipes 31 to underground cesspools 32 (transfer tank). When a predetermined quantity of sewage accumulates in a cesspool, a vacuum valve 33 opens so that sewage is sucked through a suction pipe 34 and vacuum sewage pipe 1 under the influence of suction generated by a vacuum pump 43 into an accumulating tank 41 (holding tank).

The main pipes 1-1 of vacuum sewage pipe 1 extend downwardly towards the accumulating tank and include downward-slope portions 11 and lift portions 12 provided alternately to exhibit a sawtooth-shaped configuration so that the underground depth of the pipes does not become too deep. The showing in Fig. 4 may be viewed as depicting a sewage discharge pipe 1 rising to a point above the fluid level in each of the cesspool and the accumulating tank.

The Oldfelt patent relates to a vacuum toilet system (Fig. 1) and includes a discharge valve 6 for controlling flow of material from a waste receiving bowl 2 to a holding tank 8

(transfer tank). A blower 10 establishes a partial vacuum in the holding tank 8. When a user initiates a flushing operation, rinse water enters the bowl, the blower 10 is activated, and the discharge valve 6 is opened, whereby waste material and rinse water are rapidly drawn from the bowl 2 (column 6, lines 38 through 44). As an alternative for the blower 10, the patentee refers to an electrically driven vacuum pump (column 8, lines 1 through 5).

Like the examiner, we fully appreciate that the applied references individually reveal many aspects of the system of appellant's claim 1. However, setting aside in our minds the teaching of the present application, when we collectively consider the evidence of obviousness as a whole, it is at once apparent to us that the applied patents themselves simply would not have suggested the proposed selective modifications of the Burns apparatus to yield the above-ground sewage treatment removal system as set forth in claim 1. In effect, a major overhaul and reworking of the apparatus of Burns would be required and, as we see it, only impermissible guidance from appellant's own disclosure, and not the evidence of

obviousness itself, would have provided the motivation for such a major overhaul. Since the evidence before us would not have been suggestive of the content of, in particular claim 1, the examiner's rejection of appellant's claims must be reversed.

In summary, this panel of the board has:

reversed the rejection of claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite; and

reversed the rejection of claims 1 through 8 under 35 U.S.C. § 103 as being unpatentable over Burns in view of Ushitora and Oldfelt.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)

Administrative Patent Judge	)
	)
	)
	) BOARD OF PATENT
LAWRENCE J. STAAB	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
JEFFREY V. NASE	)
Administrative Patent Judge	)

Mark Thronson
Dickstein, Shapiro and Morin
2101 L Street, N.W.
Washington, D.C. 20037

ICC/sld